IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT

LRs. Of Sumerchand **Vs.** State of Raj. & Ors.

D.B. CIVIL SPECIAL APPEAL(WRIT) NO.214/2006
against the judgment of learned Single Judge dated 1.2.2006 passed in S.B. Civil Writ Petition No.1281/1994.

Date of judgment : 15th April, 2006

PRESENT

HON'BLE MR.JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE R.P. VYAS

Mr. D.R. Bhandari for the appellant.

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BY THE COURT: (PER HON'BLE R. BALIA, J.)

Having heard learned counsel for the appellant, we are of the opinion that real grievance raised in this appeal does not relate to any error in the judgment but relates to the subsequent demand raised by the Housing Board purported to be in compliance of the directions of the learned Single Judge.

The petition filed by the appellant-petitioner relates to allotment of a house by the

Housing Board under the General Registration Scheme, 1982. The appellant had booked a house in Higher Income Group in 1981 and has subsequently paid installments when demanded. However, when the houses were ready to be delivered in 1993, the appellant was offered possession of the house by raising a demand of Rs.3,71,291/-. The bifurcation of the demand on various counts reveals that apart from charging the escalated price of land and cost of construction, which have increased during the period the scheme was implemented and other development charges after adjusting the amount paid by the appellant-petitioner, it included interest amount of Rs.64,200/- alleged to have accrued on the amount of seed money already paid by the appellant-petitioner.

The learned Single Judge finding that so far as the increase due to escalation in cost of land and cost of construction is concerned, the same was permissible in view of the judgment of the Supreme Court in Awasan Mandal Parijat Uch Ayawarg Sangharsh Samiti through its President Vs. Rajasthan Housing Board & Ors. vide judgment

dated 20.3.1997 in Civil Appeal Nos.2114-2115 of 1997, however, the learned Single Judge further opined that since the appellant-petitioner had paid the seed money by way of installments as and when demanded no amount of interest could have been charged from the petitioner only on increase in cost on account of escalation in price and directed the Housing Board to delete the same and raise a fresh demand. In our opinion, in directing so, the learned Single Judge has not committed any error in his judgment nor the petitioner has any grievance about it.

The grievance of the learned counsel for appellant as per his contention is that as a result of the judgment under appeal a fresh demand has been issued vide Annex.A dt.16.3.2006 annexed to the memo of appeal in which though no amount of interest has been charged on demand for period upto which demand of interest has been found to be not chargeable but for subsequent period interest has again been charged. That is to say from the date of raising of the original demand until the date of raising the fresh bill dated 16.3.2006. This demand has been challenged

inter alia on the ground that since earlier demand was raised in 1993, thereafter there has been no further investment and the matter was subjudice and the possession of the house was also not delivered and it remained with respondents the further interest on the amount payable under the previous demand could not have been added.

We are of the opinion that this is an independent cause of action which does not arise out of the judgment of learned Single Judge.

The petitioner ought to pursue his remedy independent of the original petition by seeking appropriate remedy whether by seeking clarification from Hon'ble Single Judge or through fresh proceedings. However, no relief in this regard can be granted in appeal. In the facts and circumstances, the appellant is allowed four weeks' time to pursue his remedy in respect thereof, if so advised and seek appropriate orders from the concerned Court and meanwhile, the cancellation of the allotment shall not be made, if demand is not paid until that time.

Subject to aforesaid observations, the special appeal is dismissed.

[R.P. VYAS], J. [RAJESH BALIA], J.

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